

Joshua M. Masur (State Bar No. 203510)  
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Attorneys for Plaintiff  
 ROBERT HOUSER

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

ROBERT HOUSER,

*Plaintiff.*

v.

KENNETH BIBA,

*Defendant.*

Case No. **CV 10 1666**  
**COMPLAINT FOR COPYRIGHT**  
**INFRINGEMENT**  
**JURY TRIAL DEMANDED**

Plaintiffs Robert Houser ("Houser" or "Plaintiff"), by and through his undersigned attorneys,  
 hereby sues defendant Kenneth Biba ("Biba" or "Defendant"), as follows.

**THE PARTIES**

1. Houser is an individual residing in San Francisco, California.
2. On information and belief, Biba is an individual residing in San Francisco, California.

**JURISDICTION**

3. Houser brings this action under the Copyright Act, 17 U.S.C. §§ 501 *et seq.* The  
 Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

**VENUE**

4. Venue in this District is proper under 28 U.S.C. § 1400(a) and/or 28 U.S.C.  
 § 1391(b). On information and belief, Biba resides in this District, and a substantial part of the  
 events or omissions giving rise to the action occurred in this District.

**INTRADISTRICT ASSIGNMENT**

5. This is an Intellectual Property Action. Under the Court's Assignment Plan and Civ.

COMPLAINT

1 L.R. 3-2(c), Intellectual Property Actions are assigned to a division on a district-wide basis.

2 **FACTUAL BACKGROUND**

3 6. In 2002, Wireless Review Magazine ("Wireless Review") commissioned Houser to  
4 photograph Biba. On information and belief, Biba was at the time the CEO of a now-defunct  
5 company called Vivato Networks, Inc. ("Vivato"). Houser photographed various Vivato employees,  
6 including Biba, on or about August 15, 2002. Houser's photographs of Biba and other Vivato  
7 employees are original works that may be copyrighted under United States law.

8 7. On or about August 30, 2002, Houser applied to the Copyright Office to register his  
9 copyright in the Vivato photographs, including the photographs of Biba. On or about September 3,  
10 2002, the Copyright Office issued Certificate of Registration VAu-562-909. A true and correct copy  
11 of Certificate of Registration VAu-562-909 is attached hereto as Exhibit A. Houser has remained  
12 the sole owner of the copyright.

13 8. In early September 2002, Wireless Review published certain of Houser's images of  
14 Vivato personnel, including Biba. Houser had granted Wireless Review a license to publish the  
15 images in question. Houser never granted any other license to publish any images from the Vivato  
16 photo shoot.

17 9. In late 2002 or early 2003, Vivato's public relations firm called Houser to request  
18 copies of the Vivato images for review. Houser sent original film to the public relations firm,  
19 accompanied by his standard language stating that the images were for provided for review only, and  
20 that all rights to the images were reserved. After several weeks and numerous phone calls, Houser  
21 finally retrieved the original film from the public relations firm. When Houser subsequently called  
22 the public relations firm to inquire regarding whether they wished to purchase any license to use the  
23 images, the public relations firm responded that they had scanned the original films and were not  
24 interested in anything else. Because Houser was surprised that the public relations firm would make  
25 these unauthorized copies, Houser immediately informed the public relations firm that neither they  
26 nor Vivato had any rights to use any of the images for any purpose and that they would need to  
27 purchase usage rights if they wanted to use the images.

28 10. In October 2009, Houser learned that Biba was using one of the photographs taken by

1 Houser in connection with Biba's professional profile on the website [www.linkedin.com](http://www.linkedin.com). True and  
2 correct copies of two views of Biba's LinkedIn profile, downloaded on or before March 18, 2010,  
3 are attached hereto as Exhibits B and C. This image was not one of those published by Wireless  
4 Review. Accordingly, on information and belief, Biba obtained this image or a scan thereof, either  
5 directly or indirectly, from Vivato's public relations firm.

6 11. When Houser searched the internet, he discovered that Biba was using the same  
7 image, created by Houser and never lawfully published, for other promotional uses as well. A true  
8 and correct copy of the speaker biographies from the 2009 Freedom to Connect conference,  
9 featuring a photo of Biba by Houser on page 2, is attached hereto as Exhibit D. A true and correct  
10 copy of the speakers' page from the Inland Empire Tech Week '09 website, also featuring a photo of  
11 Biba by Houser on page 2, is attached hereto as Exhibit E.

12 12. On October 5, 2009, at 2:31pm, Houser sent Biba electronic mail advising Biba that  
13 he had learned about Biba's unlicensed use, advising Biba of Houser's standard license rates, and  
14 requesting the time period during which Biba had used the image. A true and correct copy of  
15 Houser's first October 5, 2009 email is attached hereto as Exhibit F.

16 13. Less than five minutes later, Biba sent a response by electronic mail, challenging  
17 Houser's ownership of the image and asserting that Vivato or its public relations firm had paid for  
18 the photo shoot, but admitting that he had made the unlicensed copy using "a screen capture." A  
19 true and correct copy of Biba's October 5, 2009 email is attached hereto as Exhibit G.

20 14. On October 5, 2009, at 5:05pm, Houser responded by electronic mail, advising him  
21 that the photo shoot had, in fact, been commissioned by Wireless Review Magazine, that his  
22 copyright in the photographs had been registered, and that he had no record of licensing Vivato.  
23 Houser requested that Biba identify Vivato's public relations firm, to facilitate confirming that they  
24 had not purchased a license. A true and correct copy of Houser's second October 5, 2009 email is  
25 attached hereto as Exhibit H.

26 15. Because Biba did not respond to Houser's October 5, 2009 request that he identify  
27 Vivato's public relations firm, on October 9, 2009, Houser sent Biba an invoice via electronic mail  
28 for public relations use during calendar year. A true and correct copy of the October 9, 2009 invoice



1 is attached hereto as Exhibit I. Because Biba did not respond or pay, Houser re-sent the invoice by  
2 electronic mail on November 17, 2009. A true and correct copy of the November 17, 2009 invoice  
3 is attached hereto as Exhibit J. Because Biba still did not respond or pay, on December 22, 2009,  
4 Houser sent a hard copy of the invoice, along with the electronic mail exchange and a cover letter,  
5 via Federal Express to the address listed for Biba's current company, Novarum, on its "Whois"  
6 internet domain registration. A true and correct copy of Houser's December 22, 2009 letter and  
7 Federal Express receipt is attached hereto as Exhibit K.

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**COUNT I**  
**COPYRIGHT INFRINGEMENT**  
**(17 U.S.C. § 501 *et seq*)**

16. Houser hereby incorporates by reference, as though fully set forth herein, the  
allegations of paragraphs 1 through 15 above.

17. Biba has reproduced, created derivative works from, distributed copies of, and  
displayed publicly, Houser's copyrighted photograph.

18. Biba has never licensed any rights in the photograph from Houser, and at no time has  
Houser authorized Biba to reproduce, create derivative works from, distribute copies of, or display  
publicly, the photograph.

19. Biba's infringement is and has been willful.

20. By reason of Biba's infringement, Houser has sustained and will continue to sustain  
substantial injury, loss and damage to his ownership rights in the copyrighted work.

21. Unless enjoined and restrained, Biba's conduct threatens to further infringe Houser's  
copyright interests.

22. Houser is entitled to recover from Biba the damages he has sustained as a result of  
Biba's acts of copyright infringement. Houser is at present unable to ascertain the full extent of the  
monetary damage he has suffered by reason of Biba's acts of copyright infringement.

23. Houser is further entitled to recover from Biba the gains, profits and advantages he  
has obtained as a result of its acts of copyright infringement. Houser is at present unable to ascertain  
the full extent of the gains, profits and advantages Biba has obtained by reason of his acts of  
copyright infringement.

**JURY DEMAND**

24. Houser requests a trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Houser respectfully requests that this Court:

1. Enter judgment against Biba and in favor of Houser for the violations alleged in this Complaint;
2. Award Houser his actual damages, any additional profits of Biba, and/or statutory damages for Biba's copyright infringement, as well as punitive damages and enhancement for willfulness, pursuant to 17 U.S.C. § 504 and as otherwise permitted by law;
3. Enjoin Biba and his agents, servants, and employees, and all persons acting under, in concert with, or for Biba from making, disseminating, or causing to be made or disseminated any copies of Houser's photographs;
4. Order Biba to deliver for impoundment all copies of Houser's copyrighted photographs in Biba's possession or control and deliver for destruction all infringing copies and all materials for making infringing copies;
5. Order Biba to reimburse Houser for costs of suit, including reasonable attorneys' fees, incurred herein;
6. Award Houser prejudgment and post-judgment interest; and
7. Award Houser such other and further relief as this Court deems just and proper.

Dated: April 19, 2010

TURNER BOYD LLP

By: 

Joshua M. Masur

Attorneys for Plaintiff  
ROBERT HOUSER

**Exhibit A**  
**Certificate of Registration VAu-562-909**



## CERTIFICATE OF REGISTRATION



OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*  
 REGISTER OF COPYRIGHTS  
 United States of America

FORM VA

For a Work of the Visual Arts  
UNITED STATES COPYRIGHT OFFICE

VAu 562-909



EFFECTIVE DATE OF REGISTRATION

SEP 3 2002  
 Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

Robert Houser Photography - photographs from 8/7/02 - 8/30/02

NATURE OF THIS WORK ▼ See instructions

Photographs

PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

NAME OF AUTHOR ▼

Robert P. Houser

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

1967

Was this contribution to the work a  
 "work made for hire?"

☐ Yes  
☒ No

Author's Nationality or Domicile

Name of Country

OR { Citizens of ► United States  
 Domiciled in ►

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No  
 Pseudonymous? ☐ Yes ☒ No

If the answer to either  
 of these questions is  
 "Yes," see detailed  
 instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture☐ Map☐ Technical drawing☐ 2-Dimensional artwork☒ Photograph☐ Text☐ Reproduction of work of art☐ Jewelry design☐ Architectural work

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

Was this contribution to the work a  
 "work made for hire?"

☐ Yes  
☒ No

Author's Nationality or Domicile

Name of Country

OR { Citizens of ►  
 Domiciled in ►

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No  
 Pseudonymous? ☐ Yes ☒ No

If the answer to either  
 of these questions is  
 "Yes," see detailed  
 instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture☐ Map☐ Technical drawing☐ 2-Dimensional artwork☐ Photograph☐ Text☐ Reproduction of work of art☐ Jewelry design☐ Architectural work

Year in Which Creation of This Work Was

Completed

2002

This information  
 must be given  
 in all cases.

Date and Nation of First Publication of This Particular Work

Complete this information

ONLY if this work

has been published.

Month ►

Day ►

Year ►

Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Robert P. Houser

215 San Carlos Ave. Piedmont, CA 94611

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

SEP 03 2002

ONE DEPOSIT RECEIVED

SEP 03 2002

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK ►

• Complete all applicable spaces (numbers 5-9) on the reverse side of this page.  
 • See detailed instructions.  
 • Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of 2 pages

## NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

See instructions  
 before completing  
 this space.



EXAMINED BY *JMC*

FORM VA

CHECKED BY *my*☐ CORRESPONDENCE  
YesFOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

- a. ☐ This is the first published edition of a work previously registered in unpublished form.
- b. ☐ This is the first application submitted by this author as copyright claimant.
- c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.  
Name ▼ Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

Robert P. Houser  
215 San Carlos Ave. Piedmont, CA 94611

Area code and daytime telephone number ▶ (415) 252-7818

Fax number ▶ (510) 595-0991

Email ▶ bob@roberthouser.com

CERTIFICATION\* I, the undersigned, hereby certify that I am the

check only one ▶

- ☒ author
- ☐ other copyright claimant
- ☐ owner of exclusive right(s)
- ☐ authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Robert P. Houser

Date ▶ 8/30/02

Handwritten signature (X) ▼

X

Certificate  
will be  
mailed in  
window  
envelope  
to this  
address:

Name ▼

Robert P. Houser

Number/Street/Apt ▼

215 San Carlos Ave.

City/State/ZIP ▼

Piedmont, CA 94611

- Complete all necessary spaces
- Sign your application in space 8

1. Application form

2. Nonrefundable filing fee in check or money

order payable to Register of Copyrights

3. Deposit material

As of July 1, 1999,  
the filing fee for  
Form VA is \$30.

Library of Congress  
Copyright Office  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000

\*17 U.S.C. § 605(a). Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

Form 100-400 (00)

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U.S. GOVERNMENT PRINTING OFFICE: 1999-464-879/71

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6

See instructions  
before completing  
this space.

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**copyright form8\_30\_02.pdf**



**ELoan**



**IEEE-Hennessy**



**WR-Biba\_Vivato**

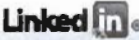


**WR-Hull\_Intel**



**Exhibit B**  
**Full LinkedIn Profile for Ken Biba**





People

« Go back to Home Page

Ken Biba 2nd

Founder and Chief Technical Officer

San Francisco Bay Area Computer Networking



Current

Managing Director at Novarum, Inc.

Past

- CEO and Chairman of the Board of Directors at Vivato
- Managing Director at Value Group
- Executive Vice President and Member of the Board of Directors at Xircom

see all...

Education

- Case Western Reserve University
- Case Western Reserve University

Connections

222 connections

Websites

- My Company

Public Profile

http://www.linkedin.com/in/kenbiba

Send InMail

Get introduced through a connection

Add Ken to your network

Forward this profile to a connection

Search for references

NEW Save Ken's Profile

Report profile photo as...

INTRODUCING WESTLAW NEXT.  
PUT AN END TO  
FRUSTRATING  
LEGAL RESEARCH.

Play the game » Discover a new Westlaw »



THOMSON REUTERS

SCORE

0

LIVES

4

Experience

Managing Director

Novarum, Inc.

Privately Held; 11-50 employees; Computer Networking industry  
May 2006 – Present (3 years 11 months)

CEO and Chairman of the Board of Directors

Vivato

Privately Held; 51-200 employees; Computer Networking industry  
December 2000 – November 2003 (3 years)

Managing Director

Value Group

Public Company; 1-10 employees; Information Technology and Services industry  
January 1996 – June 2001 (5 years 6 months)

Executive Vice President and Member of the Board of Directors

Xircom

Public Company; 1001-5000 employees; XIRC; Computer Networking industry  
April 1992 – October 1997 (5 years 7 months)

President and Member of the Board of Directors

Agilis, Inc.

Privately Held; 51-200 employees; Computer Hardware industry  
February 1988 – June 1992 (4 years 5 months)

Executive Vice President and Member of the Board of Directors

Sytek, Inc.

Privately Held; 501-1000 employees; Computer Networking industry  
July 1979 – June 1986 (7 years)

Group Leader

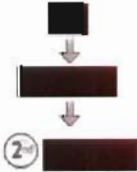
Ford Aerospace

Public Company; 5001-10,000 employees; Defense & Space industry  
June 1977 – June 1979 (2 years 1 month)

Chief Architect

ITT Defence Communications

How you're connected to Ken



Ken Recommends (2)

Michael Scullin, VP, Business Development and Government Affairs, Vivato, Inc.

Mike was a valued member of the Vivato executive...

Sharon Johnson, Director of Human Resources, Vivato, Inc.

Sharon is one of those very few people that I can...

See all Recommendations »

Public Company; 5001-10,000 employees; Computer Network Industry  
October 1976 – May 1977 ( 8 months)

Member of the Technical Staff

Mitre Corporation

Non-Profit; 5001-10,000 employees; Computer Software Industry  
September 1974 – September 1976 (2 years 1 month)

Education

Case Western Reserve University

M.S. Computer Science  
1972 – 1974

Activities and Societies: Research work in proving the security of computer systems.

Case Western Reserve University

B.S. Physics and Operation Research  
1968 – 1972

Activities and Societies: Tau Beta Pi, Started Consultants in Computer Technology

Additional Information

Websites

- My Company

Interests

rocketry, backpacking, skiing, science fiction

Groups and Associations

-  Friends of High Tech Connect
-  Web 2.0 Web 2.0 and Mobile Computing
-  GSMA Mobile World Congress (The Official Networking Group)
-  Muniwireless and Muni WiMAX
-  Smartgrids - Energy & Water
-  Rural Broadband Watch
-  Case Western Reserve University
-  Innovation in Wireless Networks

Contact Settings

Interested In

- career opportunities
- new ventures
- expertise requests
- reference requests
- consulting offers
- job inquiries
- business deals
- getting back in touch

Send a message to Ken Biba

Get introduced through a connection

Send InMail

« Go back to Home Page



**Exhibit B**  
**Full LinkedIn Profile for Ken Biba**



Home

Profile

Contacts

Groups

Jobs

Inbox (1)

More...

People

Advanced

## People

[« Go back to Home Page](#)**Ken Biba** (2<sup>nd</sup>)

Founder and Chief Technical Officer

San Francisco Bay Area | Computer Networking



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222 connections

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## Public Profile

<http://www.linkedin.com/in/kenbiba>[Send InMail](#)[Get introduced through a connection](#)[Add Ken to your network](#)[Forward this profile to a connection](#)[Search for references](#)[NEW Save Ken's Profile](#)[Report profile photo as...](#)

INTRODUCING WESTLAW NEXT.  
PUT AN END TO  
FRUSTRATING  
LEGAL RESEARCH.

[Play the game »](#) [Discover a new Westlaw »](#)



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SCORE 0  
LIVES 4

## Experience

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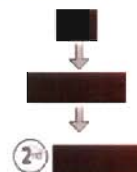
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Muniwireless and Muni WMAX



Smartgrids - Energy & Water



Rural Broadband Watch



Case Western Reserve University



Innovation in Wireless Networks

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- expertise requests
- reference requests
- consulting offers
- job inquiries
- business deals
- getting back in touch

##### Send a message to Ken Biba

Get introduced through a connection

Send InMail

« Go back to Home Page

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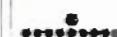
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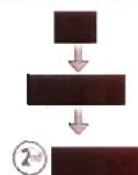
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THOMSON REUTERS

SCORE 0 LIVES 4

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### Executive Vice President and Member of the Board of Directors

Xircom

Public Company; 1001-5000 employees; XIRC; Computer Networking industry

April 1992 – October 1997 (5 years 7 months)

### President and Member of the Board of Directors

Agilis, Inc.

Privately Held; 51-200 employees; Computer Hardware industry

February 1988 – June 1992 (4 years 5 months)

### Executive Vice President and Member of the Board of Directors

Sytek, Inc.

Privately Held; 501-1000 employees; Computer Networking industry

July 1979 – June 1986 (7 years)

### Group Leader

Ford Aerospace

Public Company; 5001-10,000 employees; Defense & Space industry

June 1977 – June 1979 (2 years 1 month)

### Chief Architect

ITT Defence Communications

Public Company 5001-10,000 employees Computer Network Industry  
October 1976 – May 1977 ( 8 months)

## Member of the Technical Staff

### Mitre Corporation

Non-Profit; 5001-10,000 employees; Computer Software Industry  
September 1974 – September 1976 (2 years 1 month)

## Education

### Case Western Reserve University

M.S. Computer Science  
1972 – 1974

**Activities and Societies:** Research work in proving the security of computer systems.

### Case Western Reserve University

B.S. Physics and Operation Research  
1968 – 1972

**Activities and Societies:** Tau Beta Pi, Started Consultants in Computer Technology

## Additional Information

### Websites

- My Company

### Interests

rocketry, backpacking, skiing, science fiction

### Groups and Associations



Friends of High Tech Connect



Web 2.0 and Mobile Computing



GSMA Mobile World Congress (The Official Networking Group)



Muniwireless and Muni WIMAX



Smartgrids - Energy & Water



Rural Broadband Watch



Case Western Reserve University



Innovation in Wireless Networks

## Contact Settings

### Interested In

- career opportunities
- consulting offers
- new ventures
- job inquiries
- expertise requests
- business deals
- reference requests
- getting back in touch

### Send a message to Ken Biba

Get introduced through a connection

Send InMail

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**Exhibit H**  
**October 5, 2009, 5:05pm email from Houser to Biba**

**Subject:** Re: Photographs of you  
**Date:** Monday, October 5, 2009 5:05 PM  
**From:** Robert Houser <bob@roberthouser.com>  
**To:** Ken Biba <ken@novarum.com>

Ken,

The shoot was not done for Vivato, nor it's PR firm. The shoot was done on August 15, 2002 for Wireless Review magazine. The images ran in their September issue. The copyright for these images was filed with the Library of Congress on September 2, 2002 - registration number Vau 562-909. I have no record of selling any license to Vivato, nor do I have any high-res scans of that film. I recall some email from a PR firm - please let me know the name of Vivato's firm and I can track if there was any licenses sold to them.

However, even if I did license the PR use of the images to Vivato, or it's PR firm, that would have been a license to Vivato, not Novarum, and any license would have long since expired.

Bob

---

**From:** Ken Biba <ken@novarum.com>  
**Date:** Mon, 5 Oct 2009 15:35:53 -0700  
**To:** Robert Houser <bob@roberthouser.com>  
**Subject:** Re: Photographs of you

Robert,

So odd to hear it as "your" image.

In any case, as I recall this was a PR shoot paid for by Vivato - or perhaps the PR agency used by Vivato. The pic I used is actually a screen capture from the Vivato photo bio where the photo was used which was Vivato copyright as I recall. Vivato of course is long dead but the image (at that prehistoric time) was widely distributed on Vivato marketing literature, websites and promotional activities. It is hard to imagine that there was not appropriate licensing in place for the use of these images - much less the poor copy I (very) occasionally use in these halcyon days.

Do we really want to argue over this? Do you have a copy of the contract for this shoot? It is of course possible to recover the Vivato contractual documents - but not inexpensive.

Ken

On Oct 5, 2009, at 2:31 PM, Robert Houser wrote:

Ken,



My LinkedIn site showed me a connection to you this afternoon. I remembered the shoot I did of you and was surprised to see my image on your LinkedIn page, as well as other places.

<http://www.riversideca.gov/ietechweek/speakers.asp>

<http://freedom-to-connect.net/speakers/> <<http://freedom-to-connect.net/speakers/>>

I don't recall licensing the image for PR distribution. Please let me know if I am wrong. A year of PR/press release image licensing starts at \$750, 3 years for 1250..

Please let me know your time frame preference - to include these past uses.

Bob

..  
<image.jpg>

**Exhibit C**  
**Short LinkedIn Profile for Ken Biba**



Kerr Biba (3)

Founder and Chief Technical Officer  
San Francisco Bay Area | Computer Networking



Current	<ul style="list-style-type: none"><li>Managing Director at Novarum, Inc.</li></ul>
Past	<ul style="list-style-type: none"><li>CEO and Chairman of the Board of Directors at Vivato</li><li>Managing Director at Value Group</li><li>Executive Vice President and Member of the Board of Directors at Xircom</li></ul>
Education	<ul style="list-style-type: none"><li>Case Western Reserve University</li><li>Case Western Reserve University</li></ul>
Connections	200 connections
Websites	<ul style="list-style-type: none"><li>My Company</li></ul>
Public Profile	<a href="http://www.linkedin.com/in/kenbibba">http://www.linkedin.com/in/kenbibba</a>

see all...

Experience

Managing Director

Novarum, Inc.  
Privately Held; 11-50 employees; Computer Networking industry  
May 2006 – Present (3 years 6 months)

CEO and Chairman of the Board of Directors

Vivato  
Privately Held; 51-200 employees; Computer Networking industry  
December 2000 – November 2003 (3 years)

Managing Director

Value Group  
Public Company; 1-10 employees; Information Technology and Services industry  
January 1996 – June 2001 (5 years 6 months)

Executive Vice President and Member of the Board of Directors

Xircom  
Public Company; 1001-5000 employees; XIRC; Computer Networking industry  
April 1992 – October 1997 (5 years 7 months)

President and Member of the Board of Directors

Agilis, Inc.  
Privately Held; 51-200 employees; Computer Hardware industry  
February 1988 – June 1992 (4 years 5 months)

Executive Vice President and Member of the Board of Directors

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Group Leader

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Case Western Reserve University



Activities and Societies: Research work in proving the security of computer systems

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Additional Information

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Interests

rocketry, backpacking, skiing, science fiction

Groups and Associations

-  Friends of High Tech Connect
-  MuniWireless and Muni WIMAX
-  Gridwise & Smartgrids
-  Rural Broadband Watch
-  Case Western Reserve University

Contact Settings

Interested In

- career opportunities
  - new ventures
  - expertise requests
  - reference requests
- consulting offers
  - job inquiries
  - business deals
  - getting back in touch

Send a message to Ken Biba

Get introduced through a connection

Send InMail

**Exhibit D**  
**2009 Freedom to Connect Conference**  
**Speaker Biographies**

# F2C: Freedom to Connect

March 30 & 31, 2009 - Washington, DC

plug into the emerging internet economy

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[Speakers](#)
[Agenda](#)
[Registration](#)
[Blog](#)
[Venue/Lodging](#)
[Sponsors](#)
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## Speakers

### Confirmed speakers to date: updated 25 March 09

- Jim Baller, President, Baller Herbst Law Group
- Ken Biba, co-Founder and Chief Technical Officer, Novarum
- Thomas Cohen, Partner, Kelley Drye
- Geoff Daily, Journalist, App-rising.com
- Tim Denton, Commissioner, CRTC ("Canadian FCC")
- Benoît Felten, Senior Analyst, Yankee Group Europe
- Thomas L. Friedman, foreign-affairs columnist for The New York Times, and noted author of several books
- Sharon Gillett, Commissioner, Dept. of Telecommunications and Cable, Commonwealth of Massachusetts
- Dan Gillmor, Director, Knight Center for Digital Media Entrepreneurship, Arizona State University
- Lev Gonick, Vice President for IT Services, and CIO at Case Western Reserve University
- Dewayne Hendricks, CEO, Dandin Group Inc.
- Joanne Hovis, President, Columbia Telecommunications Corporation
- Terry Huval, Director of Lafayette (LA) Utility Systems' FTTH project.
- Nathaniel James, Program and Outreach Manager, The Media and Democracy Coalition
- L. Aaron Kaplan, Vienna Austria
- Tim Karr, Campaign Director, Free Press
- Larry Keyes, Microdesign, Telecare for Home Health
- Sascha Meinrath, Wireless Futures Program, New America Foundation
- Ellen Miller, Co-Founder, Sunlight Foundation
- Tim Nulty, former Chief Economist, House & Senate Commerce Committees, FTTH activist
- Jon Peha, Chief Technologist, FCC
- Billy Ray, CEO, Glasgow (KY) Electric Power Board
- Andrew Revkin, New York Times science reporter & blogger
- James Salter, Chairman and Chief Strategy Officer, Atlantic Engineering Group
- Chris Savage, Partner, Telecom & Media, Davis Wright Tremaine
- Bill Schrier, Chief Technology Officer, City of Seattle
- Derek Slater, Policy Analyst, Google, co-author, *Homes With Tails* policy paper
- Eva Sollberger, Creator, Stuck in Vermont video blog
- Bill St. Arnaud, Director of Network Projects, CANARIE
- Dirk van der Woude, Program Manager, Municipal Broadband Policy, Amsterdam

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#### BLOGROLL

- Alcatel-Lucent
- Atlantic Engineering Group
- Baller Herbst Law Group
- Behavioral Economics Consulting Blog
- Benoit's FibeRevolution Blog
- Benoit's Music Blog
- Burlington Telecom
- Columbia Telecommunications Corp
- Davis Wright Tremaine, LLP
- Derek Slater
- DewayneNet Archive
- East Central Vermont Fiber
- Geoff Daily's Blog
- Isabel Walcott Hilborn
- isen.blog
- Jon Peha
- Lafayette Pro-Fiber
- Lafayette Utility Systems Home
- LUS Lafayette Fiber Web
- Martin Geddes' Telepocalypse
- Media and Democracy Coalition
- Microdesign Consulting, Inc.
- Millennium Communication Group, Inc.
- MuniWireless
- New America Wireless Futures



- Case 3:10-cv-01666-BZ Document 1 Filed 04/19/10 Page 27 of 30
- Chris Venn, CEO, City of San Francisco
  - Esme Vos, MuniWireless.com
  - Herman Wagter, GNA (Citynet Amsterdam)
  - Kevin Werbach, Wharton School, University of Pennsylvania
  - Timber Wolf, Market Stability Officer, Cullem, Eaton & Thrive

## Speaker Bios



**Jim Baller** is president of the Baller Herbst Law Group, a national law firm based in Washington, DC, and Minneapolis, MN. The firm specializes in communications and related matters, including telecommunications, cable television, high-speed data communications, the Internet, wireless communications, right-of-way management, pole and conduit attachments, barriers to the public-sector entry into communications, bankruptcy, privacy, and antitrust. He is also the founder of the US Broadband Coalition, a large and diverse consortium of organizations that are working toward the development of a comprehensive national broadband strategy. Baller works regularly with multi-disciplinary teams of experts to assist local and regional government entities in making comprehensive telecommunications plans, developing state-of-the-art communications networks, developing strategic partnerships, and integrating right-of-way and zoning ordinances.



**Ken Biba** is a co-Founder and Chief Technical Officer of Novarum, an advisory firm specializing in wireless data networks. Ken has over 30 years experience in the network information systems industry combining a background of general management with a strong product and marketing focus in network systems and information security. Ken was an early engineer of the Internet in 1975. He has co-founded and managed four notable networking companies-Sytek, which was focused on cable TV-based local and metropolitan data networks, Agilis which delivered the first wireless handheld computers, Xircom, which pioneered local area networks for mobile computing, and Vivato, which was focused on scaling Wi-Fi infrastructure to cover campuses and metropolitan areas. Ken's perspective as CEO, board member of public and private companies, and as a technologist brings unique insight to the business, market and technology of bringing useful wireless solutions to users. Ken has a Bachelor of Science in Physics (Magna Cum Laude, Tau Beta Pi) and a Master of Science in Computer Science from Case Western Reserve University.

Program

- Sara Wedeman
- Sascha Meinrath's Blog
- Scott Draves
- Sidecut Reports
- Stuck in Vermont Video Blog
- Sunlight Foundation
- Tech for Non-Profits
- Terry Huval, Musician
- Tim Denton
- ValleyNet
- Vermont Telecommunications Authority
- Yuvi Kochar



**Thomas Cohen** is a partner in law firm Kelley Drye's Washington, D.C. office. His practice focuses on matters involving communications, including telecommunications, wireless and media, the Internet, privacy and government relations.

Mr. Cohen has more than 30 years of experience in the communications/telecommunications industry sector, first as a government policy maker, serving for over a decade as assistant general counsel for legislation at the Federal Communications Commission (FCC) and as senior counsel for the Senate Commerce Committee. He then was a founder and principal in firms assessing and developing communications/telecommunications properties and advising businesses. At Kelley Drye, Mr. Cohen assists clients with a variety of aspects of communications law, including federal and state administrative and legislative advocacy, business-related legal matters and litigation.



**Geoff Daily** is a contributing editor for StreamingMedia.com, and contributes regularly to EMedia, EventDV, and EContent magazines, writing about the business of online video, the future of optical media, the event video industry, and digital content distribution. He's also editor of App-Rising.com, a daily blog on the intersection of broadband networks, applications, and policy. He's a big believer in the power of broadband and eagerly engages with fellow broadband believers, including network operators (especially those deploying FTTH), applications developers, and community leaders, about how the use of broadband can revolutionize society.



**Timothy Denton** began his term as Commissioner of the Canadian Radio-television and Telecommunications Commission on August 1, 2008. He has broad experience in legal and policy matters in the areas of telecommunications, broadcasting and the Internet. Most recently, Denton has been involved in the governance of the domain name industry through his work with ICANN and as a director of the Canadian Internet Registration Authority. Between 1996 and 1998, he served as the first solicitor of the Canadian Association of Internet



Providers. As a policy advisor to the Minister of Communications from 1985 to 1987, he played a leading role in the creation of the Broadcasting Act and later contributed to the creation of the Telecommunications Act. He helped introduce competition in the long-distance telephone market as counsel to the Canadian Consumers' Association, and served as Assistant to the CRTC's Vice-Chair of Telecommunications between 1978 and 1980.



**Benoît Felten** is a senior analyst in Yankee Group's Research group with expertise in Fibre to the Home/Business, both commercial and municipal projects, business models and economic and societal impact. He helps operators, vendors and end user businesses to understand the trends in the evolution of broadband connectivity and the drivers for adoption. His current work focuses on business models around commercial FTTH, public/private partnership mechanisms for local and national governments, services over very high bandwidth access and the economic and social impact of very high broadband. Before Yankee Group, Felten was at Arcome, a French telecom consultancy and analysis firm. He also writes the Fiberevolution blog in which he expresses some of his views on fiber to the home across the world.



**Thomas L. Friedman**, the foreign-affairs columnist for The New York Times, is a three-time Pulitzer Prize winner and the author of *From Beirut to Jerusalem*; *The Lexus and the Olive Tree: Understanding Globalization*; *The World Is Flat 3.0: A Brief History of the Twenty-first Century*; and *Hot, Flat, and Crowded: Why We Need a Green Revolution—and How It Can Renew America*. He lives in Bethesda, Maryland, with his family.



**Sharon E. Gillett** was appointed by Governor Deval Patrick in the spring of 2007 to head the Massachusetts Department of Telecommunications and Cable. As Commissioner, Ms. Gillett oversees all state regulatory functions pertaining to telecommunications and cable



services, including promoting competition and consumer protection and responding to carrier and consumer inquiries and complaints. She also advises the state on broadband policy.

Ms. Gillett serves on the Telecommunications Committee of the National Association of Regulatory Utility Commissioners (NARUC), as well as the advisory council for the federal Telecommunications Relay Service Fund, which supports telecommunications access for people with hearing and speech disabilities. She is also a member of NARUC's Ad Hoc Committee on National Wireless Consumer Protection.

Prior to serving in state government, Commissioner Gillett was a Principal Research Associate at the Massachusetts Institute of Technology (MIT) where she chaired the Broadband Working Group of MIT's Communications Futures Program and taught courses on telecommunications and Internet policy. She also conducted research on municipal broadband and its economic impact and served on Boston Mayor Thomas Menino's Wireless Broadband Task Force. Commissioner Gillett received her MBA and MS in Technology and Policy from MIT and her AB in Physics from Harvard.



**Dan Gillmor** is Director of the Knight Center for Digital Media Entrepreneurship, a new project of the Walter Cronkite School of Journalism & Mass Communication at Arizona State University. He is also involved in citizen-media efforts, and is a blogger, author, media investor and co-founder of several online businesses. He spent almost 25 years in the newspaper business, and is proud of it.



**Lev Gonick** has been teaching, working, and living on the Net since 1987. Lev Gonick is vice president for information technology services and chief information officer at Case Western Reserve University in Cleveland, Ohio. He is co-chair of the CIO Executive Council's higher education committee. He is also the founder of OneCleveland now known as OneCommunity, the award winning project to create a connected community throughout Northeast Ohio through high speed wired and wireless network connectivity. He is the Chairperson of the New Media Consortium's New Horizon Project providing an annual environmental scan of new technologies and their potential impact on the academy. Additionally, Dr. Gonick previously served as president of the board of the New Media Consortium. In 2007, he and Case Western Reserve University were recognized with a ComputerWorld Laureate for launching the Cleveland 2.0 project to leverage technology to address community priorities. This included the much referenced launch of Cleveland+ in SecondLife. In 2006, he was recognized by ComputerWorld as a Premier 100 IT leader and honored in the same year by CIO magazine with a CIO 100 Award. He also serves